

STATE OF MICHIGAN
COURT OF APPEALS

In re Z. KASS, Minor.

UNPUBLISHED
February 10, 2015

No. 323120
Dickinson Circuit Court
Family Division
LC No. 12-000519-NA

Before: O'CONNELL, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

Respondent-mother J. Kass appeals as of right the trial court's order terminating her parental rights to her minor daughter under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (c)(ii) (new conditions exist that would support adjudication), (g) (failure to provide proper care or custody), and (j) (likelihood the child will be harmed if returned to the parent's care). We affirm.

I. FACTS

In September 2012, the Department of Human Services petitioned to remove the child from respondent's care. The Department asserted that respondent improperly supervised the child, did not have permanent housing, was not addressing her mental health issues, and continued to have contact with F. Corozolla, despite a no-contact that followed a domestic dispute. Respondent admitted that she did not have permanent housing, missed mental health appointments, and that Corozolla was arrested for domestic violence. The trial court took jurisdiction over the child, finding in part that respondent's domestic discord placed the child at a risk of harm. The trial court placed the child with respondent and ordered her not to have contact with Corozolla.

In October 2012, the Department petitioned the trial court to remove the child from respondent's care. Mary Sparapani, a social worker, testified that respondent and Corozolla engaged in domestic violence in front of the child. The trial court removed the child from respondent's care. The trial court ordered respondent not to have "any type of romantic, intimate, [or] sexual relationship[.]"

From October 2012 to April 2013, respondent made consistent progress on her case service plan. She obtained housing, attended counseling, and attended parenting sessions. The trial court commended respondent on several occasions for her "exemplary dedication" and "significant progress." Curtis VanDusen, the child's caseworker, reported that respondent saw

an incident of inappropriate touching between the child and the child's brother in April, but she did not report it until June. Ashley Weber, the child's case manager, reported that the child was subsequently interviewed and determined to be normal for her age. However, Weber was concerned that respondent did not take the situation seriously.

In October 2013, the trial court gave the Department permission to place the child with respondent. The Department returned the child to respondent's care in November 2013. VanDusen reported that it did not appear that respondent had any romantic or sexual relationships. In December 2013, the trial court ordered that the child remain in respondent's care under the Department's supervision, but it reiterated that respondents should not associate with any individuals with criminal histories.

In February 2014, the Department again petitioned to remove the child from respondent's care. The Department alleged that respondent had placed the child at a risk of harm by cohabitating with G. Ipsa, who had a significant criminal history that included inappropriate sexual contact with children. The trial court removed the child from respondent's care.

At a March 2014 hearing, respondent admitted that she had been in a relationship with Ipsa for nearly a year and she knew that she was not supposed to have a relationship with him. Respondent admitted that she went on a trip with Ipsa the weekend after the trial court removed the child. At a hearing in April 2014, respondent also admitted that she was friends with J. Tenuta, who has a criminal history and had his parental rights terminated. In May 2014, the Department petitioned to terminate respondent's parental rights. Katreena Hite, the child's foster care worker, reported that respondent had allowed the child to share a room and bed with a man who had disclosed inappropriate sexual contact with another child. VanDusen reported that respondent had told a parenting aide that she had used "a friend" for childcare for three days and that she was seeking a background check on him, but that he would "never pass" because he had an incident against a child.

At the termination hearing, respondent testified that she no longer had contact with Ipsa. Respondent also testified that she was getting better at making decisions for her and the child. However, she agreed that she associated with people that could cause harm to the child. Cheryl O'Neil, one of respondent's counselors, testified that respondent had poor decision-making skills but that she had made significant progress. Faye Arnold, another counselor, testified that she worked with respondent on identifying inappropriate individuals and "red flags." Arnold testified that she did not believe that respondent would take the child around inappropriate individuals. Regarding the child's best interests, Arnold testified that respondent and the child were strongly bonded. Hite testified that the child had a close and supportive relationship with her foster parents, who were interested in adopting her.

The trial court found that clear and convincing evidence supported terminating respondent's parental rights. It found that one of the reasons the child was brought into care was respondent's domestic discord with Corozolla. It noted that respondent's relationship with Corozolla and her initial efforts to hide her continuing relationship with him mirrored the current situation with Ipsa. It found that respondent had concealed her romantic relationship with Ipsa, even though she was aware that Ipsa had a significant criminal history and inappropriate contact with another child. The trial court found that respondent and Ipsa's relationship had lasted a

substantial amount of time and that the child had spent a substantial amount of time with Ipsa. The trial court also found that respondent chose to associate with individuals whose parental rights had been terminated.

The trial court found that respondent had made significant progress, but that her choice to conceal her relationship with Ipsa was “telling.” It found that after a year and a half of services, respondent continued to make unwise relationships choices that exposed the child to harm. It found that this provided clear and convincing evidence that respondent could not provide the child with proper care and custody, placed the child at a risk of harm, and demonstrated that conditions remained that would subject the child to harm.

Regarding the child’s best interests, the trial court found that respondent and the child have a strong bond, and respondent had the ability to provide the child with food, shelter, and affection. However, it also found that respondent had failed to consider the child’s wellbeing and placed her own needs first. It found that the child was doing well in foster care and that further disrupting the child’s placement would not be in her best interests. It determined that terminating respondent’s parental rights was in the child’s best interests.

II. STANDARD OF REVIEW

This Court reviews for clear error the trial court’s factual findings and ultimate determinations on the statutory grounds for termination. MCR 3.977(K); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). We also review for clear error the trial court’s determination regarding the children’s best interests. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if, after reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake. *Mason*, 486 Mich at 152.

III. MCL 712A.19b(3)(c)

Respondent contends that the trial court erred when it found that MCL 712A.19b(3)(c) supported terminating her parental rights because she made substantial progress on her case service plan. Respondent also alleges that the trial court improperly relied on evidence not presented at trial. We disagree with both assertions.

The Michigan Rules of Evidence do not apply at dispositional hearings, review hearings, and permanency planning hearings, except with respect to privileges. MCR 3.973(E); MCR 3.975(E); MCR 3.976(D)(2). However, the Michigan Rules of Evidence do apply if the trial court seeks to terminate a parent’s parental rights on the basis of new or different circumstances. MCR 3.977(F)(1)(b); *In re Gilliam*, 241 Mich App 133, 137; 613 NW2d 748 (2000).

Contrary to respondent’s assertion, the trial court did not rely on unsupported allegations in the Department’s amended petition to support terminating parental rights. Rather, it made findings consistent with respondent’s admissions at hearings in February and April 2014. Respondent admitted that Ipsa had a significant criminal history and that she knew that she was not supposed to be in a relationship with him. Respondent also admitted that she was friends with Tenuta, who had a criminal history and had his parental rights terminated. Accordingly, legally admissible evidence supported the trial court’s findings that respondent engaged in relationships and friendships with persons who had significant criminal histories.

MCL 712A.19b(3)(c) provides that the trial court may terminate a parent's rights if either of the following exist:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

(ii) Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

This statutory ground exists when the conditions that brought the children into foster care continue to exist despite "time to make changes and the opportunity to take advantage of a variety of services." See *In re Powers Minors*, 244 Mich App 111, 119; 624 NW2d 472 (2000); *In re Williams*, 286 Mich App 253, 272-273; 779 NW2d 286 (2009).

In this case, one of the reasons the child was brought into care was respondent's admission that she was engaged in an inappropriate relationship, which the trial court determined placed the child at a risk of harm. The trial court ordered respondent to refrain from relationships and not to associate with persons with criminal histories. Respondent had about sixteen months to make changes to her life and to take advantage of the services the Department provided. Respondent instead engaged in a new, inappropriate relationship by living with Ipsa, a person who had a significant criminal history that included sexual contact with a minor, while the child was in her care. The Department provided services to respondent that included counseling. Arnold testified that she had been working with respondent to identify inappropriate relationships.

Respondent contends that she made significant progress throughout the case and notes that the trial court returned the child to her care. However, as the trial court noted, it only believed that respondent was making good progress because respondent was lying to the court and the Department about her relationship status. Despite respondent's progress, the trial court had to remove the child from her care a second time because her actions placed the child at a risk of harm.

The trial court rejected respondent's assertion that she was improving and would not expose the child to inappropriate individuals in the future. It found that respondent was not credible, given that she had lied to the court and the Department for over a year about her relationship status. We will not interfere with the trial court's credibility determination. See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). We are not definitely and firmly convinced that the trial court made a mistake when it found that previous and new conditions existed that would support taking jurisdiction over the child, and that there was no reasonable likelihood that respondent would rectify the conditions within a reasonable time.

IV. MCL 712A.19b(3)(g) AND (j)

Respondent contends that the trial court erred when it found that respondent failed to provide proper care and custody and that it was likely the child would be harmed because there was no evidence that respondent's associations would harm the child. We disagree.

The trial court need only find a single statutory ground to terminate a parent's parental rights. *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012). The trial court had sufficient grounds to terminate respondent's parental rights under MCL 712A.19b(3)(c) alone. But we will address this issue for the sake of completeness.

MCL 712A.19b(3)(g) provides that the trial court may terminate a parent's rights if

[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

And MCL 712A.19b(3)(j) provides that the trial court may terminate parental rights if

[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

As well as allowing the child to live with Ipsa, additional facts in this case support that respondent did not provide the child with proper care and custody. Early in this case, respondent engaged in a surreptitious relationship with Corozolla, which exposed the child to domestic violence and a risk of harm. The child witnessed the domestic violence and was very upset. Respondent later engaged in a similar relationship with Ipsa. Respondent demonstrated that she put her personal gratification before the child's welfare by engaging in this behavior when she admittedly knew that she was not supposed to do so by going on a trip with Ipsa the week after the child was removed from her care. This behavior alone indicated that respondent failed to provide the child with proper care and custody. We agree with the trial court that proper care includes nurturing and guidance, and that exposing the child to domestic violence and individuals with extensive criminal histories does not constitute nurturing and guidance.

Further, respondent's actions made it reasonably likely that the child would be harmed if returned to respondent's care. While the child was in her care, respondent lived with a man whom she knew had an extensive criminal history that included an incident against a child. She allowed Ipsa to provide childcare for the child for at least three days. She engaged in a friendship with Tenuta, another man that she admittedly knew had a criminal history and whose rights to his child were terminated. She also failed to report to the Department that the child and her brother engaged in inappropriately sexualized play. These facts demonstrated that respondent lacked the capacity to recognize significant risks to the child's welfare. The trial court need only find that it is *reasonably likely* that the child will be harmed; it need not wait until the child is *actually* harmed. See MCL 712A.19b(3)(j).

In sum, we are not definitely and firmly convinced that the trial court made a mistake when it found that these statutory grounds supported terminating respondent's parental rights.

V. THE CHILD’S BEST INTERESTS

Respondent contends that the trial court erred by finding that termination of parental rights was in the child’s best interests because she and the child were strongly bonded. We disagree.

As an initial matter, respondent contends that the Department did not prove by clear and convincing evidence that termination was in the child’s best interests. This is not the proper standard. The trial court must order the parent’s rights terminated if it finds from a preponderance of evidence that termination is in the children’s best interests. *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). “[T]he clear-evidence standard no longer applies to the best-interest determination.” *Id.*

The trial court should weigh all the evidence available to determine the children’s best interests. *Trejo*, 462 Mich at 356-357. The trial court should consider a wide variety of factors that may include “the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *Olive/Metts*, 297 Mich App at 41-42 (citations omitted). The trial court may also consider “a parent’s history of domestic violence, the parent’s compliance with his or her case service plan, the parent’s visitation history with the child, the children’s well-being while in care, and the possibility of adoption.” *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014). Even if the parent and child are strongly bonded, if there is a serious dispute about whether the bond is a healthy bond, termination may be in the children’s best interests. See *In re CR*, 250 Mich App 185, 196-197; 646 NW2d 506 (2001), overruled in part on other grounds by *In re Sanders*, 495 Mich 394, 422-423 (2013). “Although in most cases it will be in the best interests of each child to keep brothers and sisters together . . . , if keeping the children together is contrary to the best interests of an individual child, the best interests of that child will control.” *Olive/Metts*, 297 Mich App at 42 (quotation marks and citations omitted).

In this case, the trial court reviewed evidence from the whole record and considered a variety of factors when deciding the child’s best interests. Various witnesses testified that respondent and the child shared a strong, loving bond. The trial court considered this bond when determining the child’s best interests. However, it found that the effect of respondent’s unhealthy relationship choices, the child’s need for permanency, and the child’s need for stability outweighed that bond. It found that the child was well-adjusted in foster care. Further, while the trial court did not explicitly consider the effect of separating the child from her sibling, the trial court need not comment on each piece of evidence in the record when making factual findings. See MCR 2.517(A)(2). Given that the child and her sibling had engaged in an incident of sexualized behavior, this fact did not necessarily weigh against termination. We are not definitely and firmly convinced that the trial court made a mistake when it found that terminating respondent’s parental rights was in the child’s best interests.

Affirmed.

/s/ Peter D. O’Connell
/s/ David H. Sawyer
/s/ Jane E. Markey